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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,187	10/13/2005	Dilson Ferreira da Luz	27037	2219
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EXAMINER EASTWOOD, DAVID C				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/553,187

Applicant(s)

LUZ, DILSON FERREIRA DA

Examiner

DAVID EASTWOOD

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 1-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group 1, claim(s) 1-16, drawn to a surgical skin dissector.

Group 2, claim 17, drawn to a method of performing a face lift.

2. The inventions listed as Groups 1 and 2 do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the skin dissection performed in the face lift method of group 2 can be performed by a materially different device for example a balloon dissector or kite/fan dissector.

3. During a telephone conversation with Jiaxiao Zhang on 4/9/09 a provisional election was made without traverse to prosecute the invention of group 2, claim 17. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-16 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

4. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are

subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Claim Objections

5. Claim 17 is objected to because of the following informalities: the recitation of the phrase "beginning of the" in line 9 and 15 of claim 17 is unclear and awkward. The recitation of the phrase "perform in the area marked in step b of two incisions" is unclear and awkward. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 17 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no clear explanation of the SMAS-PLATYSMA treatment recited in step k of claim 17.

9. Claim 17 recites the limitation "the surgical face detachment device" in line 2 of step e. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 17 recites the limitation "the remaining surgical devices" in line 1 of step f. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claim 17 rejected under 35 U.S.C. 103(a) as being unpatentable over John A. McCurdy M.D. (The Complete Guide to Cosmetic Facial Surgery 1981) in view of Luiz S. Toledo, M.D. (Video-Endoscopic Facelift Aesth. Plast. Surg. 18:149-152, 1994) and Zucherman et al. (US 2003/0018350) and Thomas Ray Stevenson (Surgery: scientific principles and practice, second edition, Lazar J. Greenfield et al. 1997).

Regarding Claim 17, McCurdy discloses infiltrating the operative field with a local anesthetic (p.118 first paragraph) of lidocaine and the like with an adrenalin/epinephrine additive (p.47 paragraph 4-6), marking of the area for facelift (p. 118 paragraph 3), beginning the facelift incisions through the anesthetized hemi-face in

the preauricular region and the other in the retro auricular region, detachment of the retro auricular region which extends from the ear lobe until the beginning of the occipital hairy region and incision in the temporal area (p. 118 paragraph 3) (p.119 paragraph 1)(Figure. 7), perform the resections and the SMAS-PLATYSMA treatment (p. 119 paragraph 1 and 2), sectioning of the redundant skin (p. 119 paragraph 3), application of a tubular aspiration drain to the detached area (to be removed within 12 to 48 hours post-op) (p.119 paragraph 4) (p.120 lines 5-7), final placement of a classic occlusive dressing with cotton and crepe band (p. 119 paragraph 5).

Regarding step a, McCurdy discloses the claimed invention except for the use of bupivacaine and the amounts of each substance administered. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use bupivacaine since the examiner takes Official Notice of the equivalence of any of the local anesthetics disclosed by McCurdy and bupivacaine for their use in the cosmetic surgical art and the selection of any of these known equivalents to anesthetize an operative field would be within the level of ordinary skill in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to inject the patient's operative field with a lidocaine solution of 0.5% plus bupivacaine at 0.125% with a solution of epinephrine at (1/200,000) in a volume variable between 150 and 200ml, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Regarding step d, McCurdy discloses the claimed invention except for the approximate 2.5 cm incision in the preauricular region. However, Toledo discloses a Facelift method using a 2 cm incision in the pre and retro auricular regions. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of McCurdy with the smaller incisions as disclosed by Toledo. Doing so would reduce the incised area thus reducing the amount of skin prone to scarring.

Regarding steps e-f and I, McCurdy discloses the claimed invention except for the dissection/detachment methods disclosed in steps e-f and the skin detachment device disclosed in step i. However, Zucherman discloses a blunt dissector set with multiple grades of thickness used to successively separate tissue to greater and greater widths (paragraph 13). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of McCurdy with the blunt dissector set as disclosed by Zucherman. Doing so would provide a multiplicity of choices for the physician to use the appropriate sized dissector to meet the anatomical needs of the patient.

Regarding steps g – h and I, McCurdy discloses the claimed invention except for the detachment of tissue using a scalpel and scissors. However, Toledo discloses a tissue detachment method using a scalpel or scissors. (p. 150 paragraph 3). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of McCurdy with the detachment means as disclosed by Toledo. Doing so would ensure the precision of the incision thus reducing the development of scar tissue.

Regarding step j, McCordy discloses the claimed invention except for performing the hemostasy by cauterization. However, Toledo discloses the use of cauterization for hemostasis. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of McCordy with the means for hemostasis as disclosed by Toledo. Doing so would provide a means for near instantaneously stopping bleeding from breached vessels.

Regarding step k, McCordy discloses the claimed invention except for the SMAS-PLATYSMA treatment. However Toledo discloses treating both the SMAS muscle group (p.151, column 2, 1st paragraph) and the platysma muscle in the cervical region (p.151 Column 2, 2nd paragraph). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of McCordy with the muscular treatments as taught by Toledo. Doing so would provide muscular support for the newly transported tissue.

Regarding step m, McCordy discloses the claimed invention except for the formation of a new tragus. However, It would have been obvious to one of ordinary skill in the art at the time of invention to form a new tragus once the skin flap as disclosed by McCordy had been raised and sutured to the scalp and auricular region.

Regarding step o-p, McCordy discloses the claimed invention except for repeating the steps for the other side of the face and removing the dressing within the first 12 to 24 hours. However, Stevenson discloses the repetition of a face lift method for the other side of the face (p. 2270 2nd column lines 2-4) and that the dressing should be removed and examined within 24 hours (p. 2270 column 2 paragraph 3). It

would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of McCordy with the repetition of surgical steps for the other side of the face as taught by Toledo. Doing so would ensure relative symmetry of the face of the patient. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of McCordy with the wound examination dressing change as disclosed by Toledo. Doing so would ensure the detection of possible hematomas.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the references cited page form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID EASTWOOD whose telephone number is (571)270-7135. The examiner can normally be reached on Monday thru Friday 9 a.m. to 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DAVID EASTWOOD/
Examiner, Art Unit 3731

/Anh Tuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731
4/20/09